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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/580,584

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EXAMINER

HICKS, ROBERT J

ART UNIT

PAPER NUMBER

3781

NOTIFICATION DATE

DELIVERY MODE

08/09/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

OfficeAction25944@oliff.com
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Office Action Summary	Application No. 10/580,584	Applicant(s) SHIMADA, SHINJI	
	Examiner ROBERT J. HICKS	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,4 and 13-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,4 and 13-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

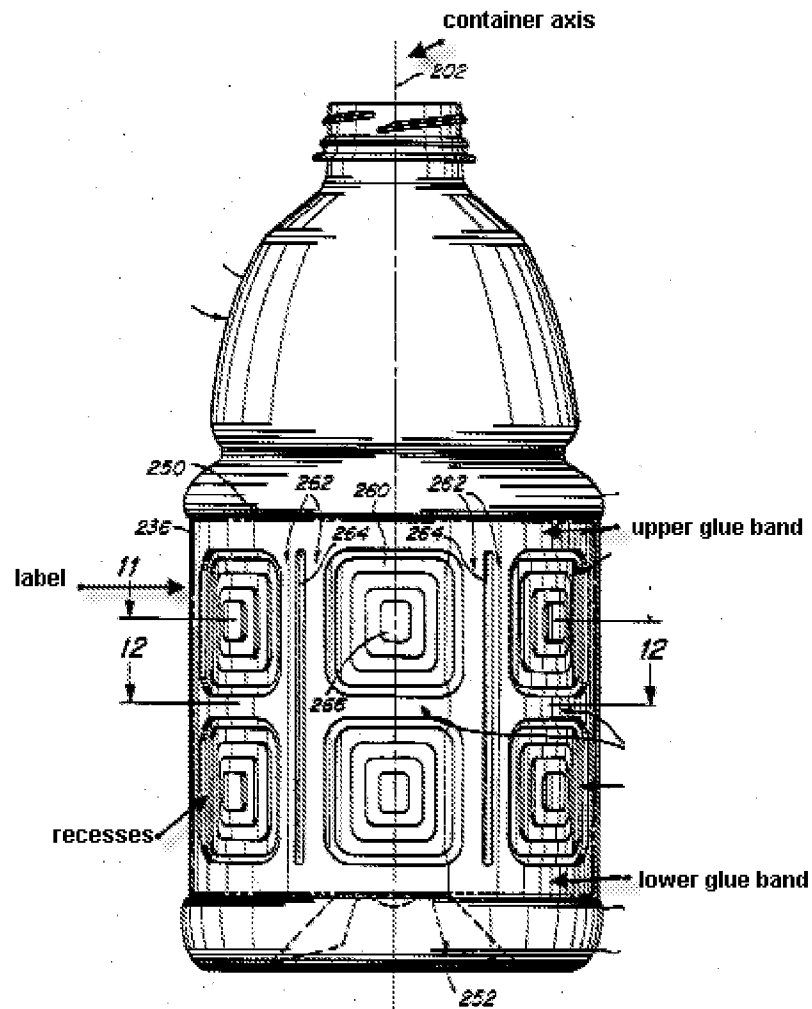
1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. **Claims 1, 4, 13-15, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krishnakumar et al. (5,178,289) [Krishnakumar] in view of Itaba et al. (5,227,233) [Itaba].**

Regarding Amended Claim 1 and Claim 17, the patent to Krishnakumar – a hot-filled container with label – discloses a synthetic resin container comprising a container body of a first material made of PET [230, Col. 3 Lines 63-68], said container body having a main portion formed with a plurality of sectioned recesses [260], said container further comprising: a label [250] arranged at said main body portion of the container body and surrounding the main body portion [Fig. 10]; the label is immovably arranged on the main body portion through an adhesive layer [238, 242, Col. 6 Lines 29-33]; and

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closed air layers are provided between the plurality of sectioned recesses and the label [Figs. 10 and 11]. When the label is applied to the bottle, air layers are formed between the recesses and the label.



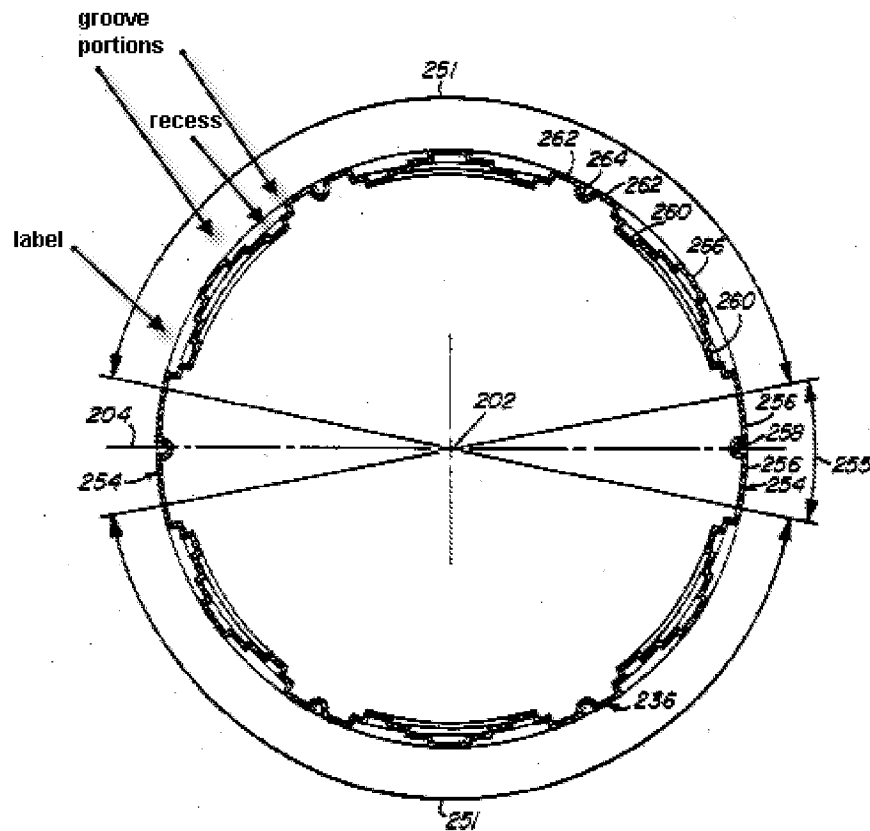


Fig. 11

Krishnakumar does not expressly disclose that the label and bottle are made of the same material; however, the patent to Itaba – a polyethylene container and label – discloses that said label [Itaba, 2] comprises the same material as said container [Itaba, 1, Col. 3 Lines 41-46] for purposes of waste disposal [Itaba, Col. 3 Lines 42-46, and Col. 5 Lines 1-6], in which the label is rigid [Itaba, Col. 3 Lines 32-36], and immovable on the container by an adhesive [Itaba, Col. 5 Lines 7-15, and Col. 6 Lines 32-34]. The label and bottle are both made of polyethylene, and the label can be placed in the mold when making the container. In addition, the printing on the label can be used to represent a recycling bottle and the label and bottle can both be recycled together. It

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would have been obvious at the time of the invention to one of ordinary skill, with market forces driving one of ordinary skill to change the prior art, to modify the label in the Krishnakumar container to be the same material as the container, as suggested by Itaba, to reduce manufacturing material costs, and so that the label can bond to the container through the manufacturing process [**Itaba**, Col. 3 Lines 37-46].

Regarding Claim 4, Krishnakumar in view of Itaba discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, Itaba discloses said label is a tack label [**Itaba**, Col. 6 Lines 32-34]. The label can be tacked onto the mold and the container, when the container is being molded.

Regarding Claim 13, Krishnakumar in view of Itaba discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, Krishnakumar discloses the closed air layers form a cushion structure that absorbs impacts from outside for the container [**Krishnakumar**, Abstract Lines 15-19]. The air pocket help prevent the container from buckling.

Regarding Claim 14, Krishnakumar in view of Itaba discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, Krishnakumar discloses the container has a longitudinal axis [**Krishnakumar**, Fig. 10] and the label is adhered at upper and lower end regions of the label along the longitudinal axis [**Krishnakumar**, 238 and 242, Fig. 10].

Regarding Claim 15, Krishnakumar in view of Itaba discloses all the limitations substantially as claimed, as applied to amended claim 1 above; further, Krishnakumar discloses the container has a longitudinal axis, and further comprises annular groove

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portions [**Krishnakumar**, Fig. 11] extending about the longitudinal axis on opposite sides of the plurality of sectioned recesses [**Krishnakumar**, Fig. 11], the annular groove portions being covered by the label [**Krishnakumar**, Figs. 10 and 11].

4. Claims 3 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krishnakumar in view of Itaba as applied to amended claim 1 and claim 15 above, respectively, and further in view of Hoffman (4,976,798).

Krishnakumar in view of Itaba discloses all the limitations substantially as claimed, as applied to amended claim 1 and claim 15 above, respectively. The Krishnakumar and Itaba combination does not expressly disclose the features of claims 3 and 16; however, the patent to Hoffman - a method of applying a plastic wrap to a container - discloses a heat-shrinkable label with a heat-sensitive adhesive agent [**Hoffman**, 40] that is applied to a container [**Hoffman**, 42, Col. 4 Lines 15-18]. The label is attached to the container. It would have been obvious at the time of the invention to one of ordinary skill, with market forces driving one of ordinary skill to change the prior art, to modify the label in the Krishnakumar and Itaba combination container assembly to be a heat-shrinkable label with a heat-sensitive adhesive, as suggested by Hoffman, in order to apply a label directly to the container [**Hoffman**, Col. 1 Lines 66-67].

Response to Arguments

5. Applicant's arguments with respect to claim 1 have been considered but are moot in view of the new ground(s) of rejection. In response to applicant's argument that the Vaillencourt et al. (5,341,946) and Itaba references fail to show certain features of

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applicant's invention regarding amended claim 1 {**Remarks**, Page 4 Lines 12-17}, see Paragraph 3 of this office action to see how Krishnakumar in view of Itaba meets the claim limitations set forth regarding amended claim 1.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. HICKS whose telephone number is (571)270-1893. The examiner can normally be reached on Monday-Friday, 8:30 AM - 5:00 PM, EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax

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phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert J Hicks/
Examiner, Art Unit 3781

/Anthony Stashick/
Supervisory Patent Examiner, Art
Unit 3781